

Applicants have carefully considered this Application in connection with the Examiner's Action, and respectfully request reconsideration of this Application in view of the above Amendment and the following remarks.

Pending in the application are Claims 1 – 7 and 9 – 124.

Applicants have amended Claim 1 to specify that the method includes a step of maintaining the food product in contact with the acidic composition until the food product is ready for consumption. Support for the amendment of Claim 1 can be found in the specification in Paragraph 56 and also in original Claims 46, 47, 49, and 54. In Paragraph 56, it is stated that the food product being treated can be a ready to eat ("RTE") food product and that the acidic composition is very effective at treating these RTE products without affecting the taste. RTE products are those that can be eaten directly out of the packaging. Claims 46, 47, 49, and 54 all pertain to RTE food products. Clearly, then, the food product is contacted with the acidic composition and this contact is maintained until the food product is consumed. No washing or cooking steps are necessary.

I. **Rejections Under 35 U.S.C. §103(a)**

A. **Claims 1 – 7**

Claims 1 – 8 stand rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 5,419,908 to Richter et al. ("Richter") in view of U.S. Patent No. 3,454,406 to Alderton ("Alderton"). The Examiner admits that Richter does not teach a food additive anti-microbial compositions having a pH from 1.0 to 1.5. The Examiner argues that Richter provides the missing teaching of this low pH range. Applicant respectfully asserts that Richter in view of Alderton does not teach every limitation of the claimed subject matter as amended.

As noted above, Applicant has amended the claims to specify that the acidic composition, which has a pH between 1.0 and 1.5, is maintained in contact with the food product until it is ready for consumption. Neither Alderton nor Richter suggest that an acidic composition having

such a low pH can be left in contact with the food product until the food product is ready for consumption. Although Alderton might teach a lower pH range than Richter, Alderton requires that the acid used in the “acid stripping” step be neutralized so that the pH is only slightly more acidic than its original pH before it is packaged. See Alderton, col. 5, ll. 53-56; col. 6, ll. 57-60. Thus, Alderton does not teach that the low pH acidic composition can be left in contact with the food product until it is ready for consumption. In addition, Alderton teaches that his invention “does not depend on any ability of the acid per se to destroy microbial forms.” See Alderton, col. 5, ll. 30-32. Alderton’s step of “acid stripping” has “little if any ability to destroy spores on contact” and the function of this step is to “put the spores into a condition wherein their thermal resistance is lowered.” See Alderton, col. 5, ll. 32-35. Thus, Alderton clearly does not teach the use of a low pH acidic composition as it is claimed in the current claims.

In addition, although Richter might teach the use of an antimicrobial composition as a food additive, Richter does not teach that an acidic composition having a pH between 1.0 and 1.5 can be used as a food additive. Thus, there is no teaching in Richter, or in Alderton, that the acidic composition of the current claims can be maintained in contact with the food product until it is ready to be consumed.

For these reasons, Claims 1 – 7 are not obvious in view of Richter and in further view of Alderton.

B. Claims 9 – 39 and 51 – 55

Claims 9 – 39 and 51 – 55 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Richter in combination with U.S. Patent No. 6,436,891 to Kemp et al. (“Kemp”). Although the Office Action does not state it, Applicant also assumes that the Examiner is applying Alderton to these claims as well. The Examiner asserts that Kemp teaches the addition of sulfuric acid to calcium hydroxide and that it would have been obvious to use the metal salts of Kemp in combination with Richter.

Applicants respectfully assert, as already discussed above, that Richter and Alderton do not teach or suggest the limitations of underlying Claims 1 – 7 these references in combination do not teach that the acidic composition having a pH from 1.0 to 1.5 remains in contact with the food product until it is ready to be consumed. The claimed method requires that the acidic composition be maintained in contact with the food product until it is ready for consumption.

Furthermore, with regard to Claims 9 – 20, Kemp does not teach or suggest the direct addition of the claimed metal salts to an acidic composition which maintains a low pH of between about 1.0 and about 1.5. The claimed metal salts are all very acidic in nature and are sufficient to lower the pH of the acidic composition to below 1.5. Kemp combines basic calcium hydroxide with sulfuric acid in a neutralization reaction, which does not contribute to lowering the pH of the composition. Kemp also teaches the addition of calcium sulfate, which is a neutral salt, not an acidic salt. There is no motivation to combine the teachings of Kemp with Richter because there would be no benefit in adding metal salts to the composition of Richter. Neutral calcium sulfate would not be soluble in Richter's compositions and the dissolution of the salt could raise the pH of Richter and be detrimental to the antimicrobial activity. The current claims require that the final pH of the acidic composition be from about 1.0 to about 1.5. This is simply not taught through the use of Kemp's metal salts in combination with Richter.

With regard to the remainder of the teachings of Kemp as they are applied to the current claims, Kemp always requires the addition of a strong inorganic acid such as sulfuric acid. Thus, the teachings of Kemp are not applicable to the current claims, in combination with Richter. The claims require organic acids alone, in high concentration, with a resultant very low pH. The inclusion of base material, alcohol, surfactants, and oleic acid may work effectively in combination with a strong inorganic acid, but these teachings are not applicable to high concentrations of organic acids meeting the claimed limitations. This is apparent because the claims utilize very different amounts of these additives compared to the teachings of Kemp and Richter.

With regard to Claims 45 – 55, Applicants respectfully assert that neither Richter nor Kemp, nor the references in combination, disclose food products or animal carcasses that have been contacted with the claimed acidic composition. Neither Richter nor Kemp teaches a composition containing an organic acid alone in high concentration having a pH from about 1.0 to about 1.5. Richter and Kemp rely on entirely different ingredients and mechanisms within their compositions to achieve antimicrobial efficacy and neither suggests that the claimed composition could be used to treat any food products, including ready-to-eat food products.

C. Claims 40 – 44

Claims 40 – 44 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Richter in combination with Kemp and in further combination with U.S. Patent No. 6,627,593 to Hei et al. (“Hei”). Although it is not mentioned in the Office Action, Applicants assume that the Examiner is also applying Alderton in addition to Richter. The Examiner asserts that Hei teaches the use of hydrogen peroxide in an antimicrobial solution for food products.

Applicants respectfully assert, as already discussed above, that Richter and Alderton do not teach or suggest the limitations of underlying Claims 1 – 7 because they do not teach that the acidic composition having a pH of from 1.0 to 1.5 is maintained in contact with the food product until it is ready for consumption. The teachings of Kemp are also inapplicable to the claimed subject matter because Kemp always requires a strong inorganic acid and thus Kemp’s asserted teachings on additives cannot be applied to the claimed acidic composition. The claimed acidic composition uses only organic acid.

Furthermore, the teachings of Hei cannot be applied to Claims 40 – 44 because Hei utilizes organic acids and peroxide to create peroxy dicarboxylic acids. See Hei, Abstract. The current claims do not create peroxy dicarboxylic acids because the claims do not include all of the necessary ingredients and reaction conditions for the creation of these acids. Hei is directed to an entirely different type of acidic composition and none of Hei’s teachings are applicable to the current claimed subject matter. Hei certainly does not teach an acidic composition having a

pH from about 1.0 to about 1.5. Hei's compositions have pH's of about 3. See Hei, Table 2, n. 5; Table 3, n. 2; and Table 5, n. 3.

For these reasons, Richter and Alderton in view of Kemp and Hei do not teach or suggest the subject matter of Claims 40 – 44.

II. Rejections Under 35 U.S.C. §102(e)/103

Claims 56 – 124 stand rejected on the ground of being anticipated or, in the alternative, obvious in view of U.S. Patent Publication No. 2002/0197365 to Kemp et al. (“the Kemp Publication”). The Examiner asserts that Kemp discloses HAMMIA and AGIIS and pertains to reducing biological contaminants in food items. Applicants respectfully assert that the Kemp Publication does not disclose, teach, or suggest all of the limitations of the current claims. Although the Kemp Publication does teach the application of an acidic composition to a variety of food items, the Kemp Publication does not disclose or teach an acidic composition that comprises organic acid kept in a dissociated state by means of a very low pH. The acidulants described in the current claims are intended to maintain the low pH in order to keep the organic acid dissociated. Thus, the claims of the current application are patentable over the disclosures and teachings of the Kemp publication.

III. Conclusion

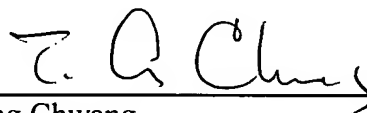
Applicants respectfully submit that, in light of the foregoing Amendment and comments, Claims 1 – 7 and 9 – 124 are in condition for allowance. A Notice of Allowance is therefore requested.

Attorney Docket No.:
MORN-0015 (108347.00074)

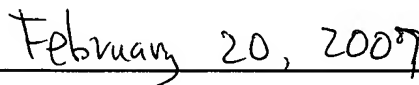
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If the Examiner has any other matters which pertain to this Application, the Examiner is encouraged to contact the undersigned to resolve these matters by Examiner's Amendment where possible.

Respectfully submitted,



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